

conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(c) In cases when it is determined that an oral hearing is not required by this section, the FDIC will accord the debtor a “paper hearing,” that is, the FDIC will decide the issues in dispute based upon a review of the written record.

#### **§ 313.84 Effect of timely request.**

If the FDIC receives a debtor’s written request for hearing within 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall not issue a withholding order until the debtor has been provided the requested hearing, and a decision in accordance with § 313.88 and § 313.89 has been rendered.

#### **§ 313.85 Failure to timely request a hearing.**

If the FDIC receives a debtor’s written request for hearing after 15 business days of the date the FDIC mailed its notice of intent to seek garnishment, the FDIC shall provide a hearing to the debtor. However, the FDIC will not delay issuance of a withholding order unless it determines that the untimely filing of the request was caused by factors over which the debtor had no control, or the FDIC receives information that the FDIC believes justifies a delay or cancellation of the withholding order.

#### **§ 313.86 Hearing official.**

A hearing official may be any qualified individual, as determined by the FDIC, including an administrative law judge.

#### **§ 313.87 Procedure.**

After the debtor requests a hearing, the hearing official shall notify the debtor of:

- (a) The date and time of a telephonic hearing;
- (b) The date, time, and location of an in-person oral hearing; or
- (c) The deadline for the submission of evidence for a written hearing.

#### **§ 313.88 Format of hearing.**

The FDIC will have the burden of proof to establish the existence or amount of the debt. Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists, or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law. The hearing official shall maintain a record of any hearing held under this section. Hearings are not required to be formal, and evidence may be offered without regard to formal rules of evidence. Witnesses who testify in oral hearings shall do so under oath or affirmation.

#### **§ 313.89 Date of decision.**

The hearing official shall issue a written opinion stating his or her decision as soon as practicable, but not later than sixty (60) days after the date on which the request for such hearing was received by the FDIC. If the FDIC is unable to provide the debtor with a hearing and decision within sixty (60) days after the receipt of the request for such hearing:

(a) The FDIC may not issue a withholding order until the hearing is held and a decision rendered; or

(b) If the FDIC had previously issued a withholding order to the debtor’s employer, the withholding order will be suspended beginning on the 61st day after the date the FDIC received the hearing request and continuing until a hearing is held and a decision is rendered.

#### **§ 313.90 Content of decision.**

The written decision shall include:

- (a) A summary of the facts presented;
- (b) The hearing official’s findings, analysis and conclusions; and
- (c) The terms of any repayment schedule, if applicable.

#### **§ 313.91 Finality of agency action.**

Unless the FDIC on its own initiative orders review of a decision by a hearing official pursuant to 17 CFR 201.431(c), a